

NO.: S01S-CR-12-0176761S : SUPERIOR COURT – G.A. 1
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF STAMFORD
VS. : AT STAMFORD
WILLIAM B. JENNINGS : MARCH 28, 2012

MOTION TO DISMISS

William Bryan Jennings (the “Defendant”), pursuant to Connecticut Practice Book §41-8(1), the Fourth and Fourteenth Amendments of the United States Constitution, Article One, Section Seven of the State Constitution, and the holdings of *Franks v. Delaware*, 438 U.S. 154 (1978), *State v. Weinberg*, 215 Conn. 231, 237, *cert. denied*, 498 U.S. 967 (1990), and *State v. Bergin*, 214 Conn. 657, 666, n.8 (1990), moves this Court to enter an Order dismissing the Information.

As this Motion will show, the affidavit in support of the arrest warrant (the “Affidavit”) that was executed by Detective Chester Perkowski of the Darien Police Department on February 14, 2012, and which was subscribed and sworn to before Lieutenant Ronald Bussell of the Darien Police Department, contains false statements that were made knowingly and intentionally or with reckless disregard for the truth, and also omits material facts, that collectively were necessary to the determination that probable cause existed to arrest the Defendant.

The complaining witness, Mohamed Anmar, made materially different statements to the Darien Police Department on the night of the incident and in the days after the incident. However, in the Affidavit, Detective Perkowski chose to selectively rely upon some of Mr. Anmar’s statements, including, most egregiously, for the charge of Intimidation by Bigotry or

Bias in the Second Degree, and omitted the materially inconsistent statements made by Mr. Anmar. In addition, Detective Perkowski knowingly and intentionally included false statements, such as the extent of Defendant's alleged alcohol consumption that day and his refusal to submit to a polygraph examination. The cumulative effect of these numerous material misstatements and material omissions, which were essential to the probable cause determination, is to seriously undermine the credibility of Mr. Anmar and the affiant. These false statements and material omissions include at this time:

1. The third count of the Information charges Defendant with Intimidation by Bigotry or Bias in the Second Degree, General Statutes § 53a-181k. In support of this charge, Detective Perkowski states in paragraph 9 of the Affidavit that during the alleged stabbing, the Defendant stated to Mr. Anmar that "you should go back to your country."

Yet on the night of the incident, Mr. Anmar made no report whatsoever to the Darien Police Department of any derogatory remarks made by the Defendant during the course of the alleged stabbing. As set forth in the December 22, 2011 report of Officer Thomas Whyte, Mr. Anmar spent over an hour with the Darien Police, and later called Officer Whyte upon his return to New York City. Mr. Anmar never mentioned any derogatory remarks by the Defendant during any of his extensive contact with the Darien Police on the night of the incident. Indeed, in his report, Officer Whyte stated that if the suspect was located, the charges would be Robbery in the First Degree, General Statutes §53a-134 and Assault in the First Degree, General Statutes §53a-59. There is no reference in Officer Whyte's report of any bigotry-related charge. Further, Mr. Anmar declined to give a written statement that night stating "he wanted to get back to work." (Report of Officer Whyte, p. 4 of 4). The first time Mr. Anmar makes any reference to

the alleged derogatory statement by Defendant is on December 28, 2011, one week after the incident. The Affidavit did not point out these inconsistencies.

2. On the night of the incident, Mr. Anmar told the Darien Police that the alleged stabbing took place in or around the driveway of the Defendant's home, as stated in Officer Whyte's report:

While at the residence, AMMAR [sic] stated that the suspect was still in his cab, but refused to pay the fare. AMMAR stated that they began to argue and AMMAR stated he would call the police. The suspect then stated "go ahead, call the police" and "do you want me to stab you?" AMMAR stated that he reversed out of the driveway and attempted to call 911. At that point, AMMAR stated the suspect pulled a small pen knife from his coat pocket and began stabbing at AMMAR . . . The suspect was able to successfully stab AMMAR multiple times in his right hand as AMMAR drove away from the residence.

(Report of Officer Whyte, p. 4 of 4) (emphasis added).

In stark contrast, one week later, Mr. Anmar states that the alleged stabbing occurred on Route 1 in Darien, and not at the Defendant's residence. (Voluntary Statement of Mohamed Anmar dated December 28, 2011, pp. 1-2, (the "Voluntary Statement")). These locations are at least a mile apart. The Affidavit did not disclose this inconsistency.

3. On the night of the incident, Mr. Anmar stated to Officer Whyte that, after being stabbed as he "drove away from the residence," he was "able to dial 911" and "he pulled over (on Squab Lane)," at which point the Defendant "exited the taxi and ran from the scene." (Report of Officer Whyte, p. 4 of 4).

However, one week later Mr. Anmar told a completely different story. In his Voluntary Statement, Mr. Anmar states that, after the dispute in Defendant's driveway, he "drove off to find the police". After making several turns, he:

continued straight to Rt. 1. At Rt. 1 [the Defendant] reached through the partition ... I continued driving and stopped at a red light where he got out of the car. He headed up the street and went into a park. I was yelling for help for someone to call 911. I drove around the block and stopped in the train station lot.

Squab Lane is a distinctively different location from Route 1. The Affidavit did not point out these inconsistencies.

4. The Affidavit ¶7, states that, according to Mr. Anmar, the Defendant agreed to pay the specific fare of \$204.00 for the taxi ride to Darien. Yet, Mr. Anmar never made such a statement on the night in question. On December 21-22, 2011, the night of the incident, as reflected in the above-referenced report of Officer Whyte, Mr. Anmar gave no such account to the police regarding the allegedly agreed-upon fare. In fact, he informed the police that the fare was “(over \$100),” as reflected in Officer Whyte's report, p. 3 of 4.

5. The Affidavit, ¶8, states that, according to Mr. Anmar, the Defendant opened the sliding rear door of the taxi, in an attempt to escape the vehicle, while driving on Mansfield Avenue in Darien. Mr. Anmar concedes that this was one of several attempts by the Defendant to leave the taxi. The Affidavit omits the material information that in Mr. Anmar's oral statement to the Darien Police Department on December 28, 2011 (as reflected in the report of Detective Perkowski dated January 4, 2012, p. 3 of 5), Mr. Anmar was unable to identify where the Defendant attempted to exit the vehicle. Moreover, in Mr. Anmar's written statement of December 28, 2011, there is no reference to this significant event, the Defendant trying to flee the vehicle, occurring at all that evening. Indeed, in his statement to the Darien Police on the night of the incident (as reflected in the report of Officer Whyte), Mr. Anmar never stated that the Defendant attempted to flee the moving vehicle, and stated only that the Defendant left the vehicle when Mr. Anmar pulled over and called 911 on Squab Lane. Finally, the Affidavit

critically omits the description of this key event as contained in the Defendant's written statement of January 20, 2012, p. 2 of 4, that the Defendant was able to open said door and attempted to exit the vehicle on Knollwood Lane, but Mr. Anmar went through the stop sign at the end of Knollwood Lane at too high a rate of speed for the Defendant to exit the vehicle.

6. The Affidavit, ¶15, reflects that, in an in-person interview with Detective Perkowski and Officer Whyte on January 4, 2012, the Defendant stated that "he had been drinking throughout the day." This statement is wantonly false and deliberately misleading. In his written statement to the Darien Police Department dated, January 20, 2012, p. 1 of 4, and at said in-person interview, the Defendant clearly stated that no alcohol consumption occurred before 5:00 p.m., the time at which the Defendant hosted a live charity auction.

7. The Affidavit, ¶¶19-20, omits material information that would show that Mr. Anmar unlawfully restrained the Defendant in his taxi and operated the taxi in a reckless manner intended by Mr. Anmar to prevent the Defendant from exiting the taxi so that Mr. Anmar could return the Defendant to New York City as Mr. Anmar previously threatened to do. For example, the Affidavit omits the Defendant's written statement provided to Detective Perkowski on January 20, 2012, p. 2 of 4, that while in the Defendant's driveway, Mr. Anmar specifically refused to allow the Defendant to leave the taxi if the Defendant would not pay the fare of \$294 that the Defendant states was requested by Mr. Anmar. Furthermore, the Affidavit omits the Defendant's written statement of January 20, 2012, p. 2 of 4, that he intended to exit the vehicle at the stop sign at the intersection of Knollwood Road and Mansfield Avenue, but Mr. Anmar, while recklessly operating the motor vehicle with the rear right door open, deliberately went through the stop sign at that intersection at too high a rate of speed for the Defendant to safely exit the vehicle. The Affidavit likewise omits the material information that Mr. Anmar

continued to engage in similar reckless conduct, by deliberately disobeying a traffic signal at the intersection of Mansfield Avenue and Route 1, thereby intentionally preventing the Defendant from leaving the vehicle as set forth in the Defendant's written statement of January 20, 2012, pp. 2-3.

8. The Affidavit, ¶¶9, 21, omits the material information that the location on Route 1 where the Defendant finally managed to escape from Mr. Anmar's taxi was approximately 140 yards from the turnoff that leads to the southbound entrance to the Connecticut Turnpike, the same direction in which the vehicle was heading. This is a significant location given Mr. Anmar's previous threat to return the Defendant to New York City against his will as set forth in the Affidavit, ¶20. In addition, also omitted from the Affidavit is the fact that the Connecticut Turnpike and signs for the southbound entrance are clearly visible from this location.

9. The Affidavit, ¶9, reflects that Mr. Anmar, after the Defendant fled the vehicle on foot, tried to follow the Defendant but could not locate him. The Affidavit omits the material information that on December 21-22, 2011, the night of the incident, as reflected in the above-referenced report of Officer Whyte, Mr. Anmar did not inform the police that he attempted to follow the Defendant. Further, in Mr. Anmar's Voluntary Statement of December 28, 2011, there is no mention whatsoever of any effort to follow the Defendant.

10. The Affidavit, ¶25, states that, the polygraph examination of the Defendant was cancelled because of counsel's court obligations and because counsel expressed the view that he saw "no benefit" to the Defendant in taking the polygraph examination. This statement is purposefully misleading and false.

The Affidavit omits the material information that Detective Perkowski conveyed to both the Defendant and his counsel at the Darien Police Department on January 4, 2012, that he

wished to have polygraph examinations of both Mr. Anmar and the Defendant conducted by the Connecticut State Police as part of this investigation. On that basis, the Defendant agreed to submit to a polygraph examination. However, despite Detective Perkowski's representations that both parties would be given polygraph examinations, the Darien Police reneged on their commitment to schedule a polygraph examination for Mr. Anmar. In addition, counsel for the Defendant subsequently sought a commitment from Detective Perkowski that if the Defendant obtained a favorable result on the polygraph examination the investigation would be concluded. Detective Perkowski was unwilling to make that commitment. As a specific result of the foregoing, the Defendant declined to participate in the polygraph examination. (Letter of Attorney Eugene Riccio to Detective Perkowski, dated February 15, 2012, annexed hereto as Exhibit "A").

The Defendant reserves his right to amend this Motion to include any additional material misstatements and/or omissions in the event they become known to him during the pendency of this case.

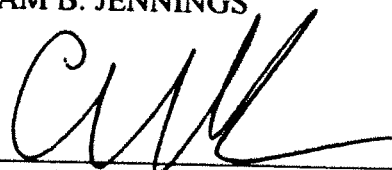
In that the above-referenced materially false statements and material omissions were necessary to an objective determination of probable cause to arrest the Defendant, the Defendant requests an evidentiary hearing on said Motion. At said hearing, in light of the intentioned and/or reckless, repeated and substantial false statements and omissions with regard to the Affidavit, which in the aggregate establish a lack of probable cause to arrest the Defendant, the Defendant will seek the dismissal of this case.

No similar motion has been filed.

WHEREFORE, the Defendant requests said Motion to Dismiss be granted.

THE DEFENDANT
WILLIAM B. JENNINGS

BY

A handwritten signature in black ink, appearing to be 'EJR' or similar, written over a horizontal line.

Eugene J. Riccio
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ORDER

The foregoing Motion having been heard it is hereby ordered:

GRANTED/DENIED.

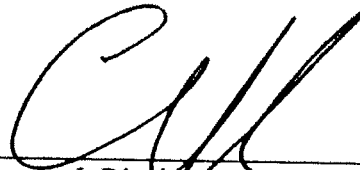
THE COURT

JUDGE/CLERK

CERTIFICATION

This is to certify that a copy of the foregoing has been sent via facsimile, on this 28th day of March, 2012, to:

Steven Weiss, Esq.
Supv. Assistant State's Attorney
Office of the States Attorney
123 Hoyt Street
Stamford, CT 06905



Eugene J. Riccio

EXHIBIT “A”

THE LAW OFFICES OF
JOHN R. GULASH & EUGENE J. RICCIO

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P.O. BOX 9118
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170 MASON STREET
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*ALSO ADMITTED IN NEW YORK
*ALSO ADMITTED IN MASSACHUSETTS

February 15, 2012

Via Facsimile

Detective Chester M. Perkowski, Jr.
Darien Police Department
25 Hecker Avenue
P.O. Box 148
Darien, CT 06820

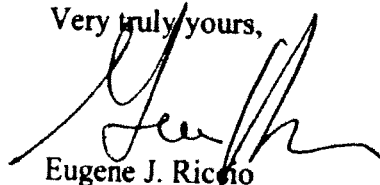
Re: Bryan Jennings

Dear Detective Perkowski:

As we discussed, as counsel to Bryan Jennings and in light of your decision to submit an arrest warrant application for Mr. Jennings, I am requesting that an arrest warrant application also be submitted to the Court for the arrest of the taxicab driver for his actions with regard to my client on the evening of December 22, 2011, for the crimes of unlawful restraint in the first degree in violation of Conn. Gen. Stat. §53a-95 and reckless endangerment in the first degree in violation of Conn. Gen. Stat. §53a-63. As reflected by my client's written statement to you, the taxicab driver took my client against his will from his home on 39 Knollwood Lane in Darien to a location on the Boston Post Road near the Darien Sports Shop with the door of the vehicle open while driving in a reckless fashion. There is no dispute by the taxicab driver that he engaged in this conduct. Accordingly, in the event that you seek the arrest of Mr. Jennings for this incident, justice and fairness dictates that you seek the arrest of both men.

In addition, as we also discussed, due to the fact that you would be unable to commit that a favorable result on the polygraph examination by Mr. Jennings would terminate this investigation, he will decline the opportunity to submit to an examination. Thank you.

Very truly yours,



Eugene J. Riccio